

Executive Summary – Enforcement Matter – Case No. 43532
Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell
RN102012473
Docket No. 2012-0340-PST-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PST

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Kwick Korner Shell, 203 South Timberland Drive, Lufkin, Angelina County

Type of Operation:

Convenience store with retail sales of gasoline

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: November 2, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$10,132

Amount Deferred for Expedited Settlement: \$2,026

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$8,106

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN601101553 - Average

Person/CN603797085 - High

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell
RN102012473
Docket No. 2012-0340-PST-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: August 5, 2010 and December 28, 2011

Date(s) of NOE(s): January 12, 2012

Violation Information

1. Failed to operate and maintain the underground storage tank ("UST") system in accordance with accepted industry practices. Specifically, staining was observed on the equipment beneath dispenser nos. 3, 5, and 7 and in sump no. 1 [30 TEX. ADMIN. CODE § 334.48(b)].
2. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current release detection information for the UST system [30 TEX. ADMIN. CODE § 334.7(d)(3)].
3. Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].
4. Failed to test the line leak detectors at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a)].
5. Failed to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1)].
6. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondents successfully conducted the line leak detector and piping tightness testing on January 24, 2011.

Technical Requirements:

The Order will require Respondents to:

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a. Within 30 days:

i. Submit an amended registration to reflect the current release detection information for the UST system;

ii. Install and implement a release detection method for the USTs at the Facility and begin recording volume measurements and reconciliation of inventory control at least once a month;

iii. Implement procedures to ensure the UST system is operated and maintained in accordance with accepted industry practices including, but not limited to inspecting the equipment beneath dispenser nos. 3, 5, and 7 and sump no. 1 to ensure no leaks are present; and cleanup and dispose of the stained soils at an authorized facility.

b. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Maggie Dennis, Enforcement Division,
Enforcement Team 7, MC 128, (512) 239-2578; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: Khaled Karim, Owner, Kwick Korner Shell, 5 Windsor Court, Lufkin,
Texas 75901

Shaki Pyakurel, Owner, Kwick Korner Shell, 5 Windsor Court, Lufkin, Texas 75901

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	17-Jan-2012	Screening	18-Jan-2012	EPA Due	
	PCW	2-Feb-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell		
Reg. Ent. Ref. No.	RN102012473		
Facility/Site Region	10-Beaumont	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	43532	No. of Violations	3
Docket No.	2012-0340-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Wallace Myers
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$343
Approx. Cost of Compliance: \$2,030
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	1.3%	Adjustment	\$132
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided cost of compliance associated with violation no. 3.

Final Penalty Amount	\$10,132
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,132
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,026
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$8,106
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Screening Date 18-Jan-2012

Docket No. 2012-0340-PST-E

PCW

Respondent Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell

Policy Revision 2 (September 2002)

Case ID No. 43532

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102012473

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 18-Jan-2012

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PCW

Respondent Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell

Policy Revision 2 (September 2002)

Case ID No. 43532

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102012473

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.48(b)

Violation Description Failed to operate and maintain the underground storage tank ("UST") system in accordance with accepted industry practices. Specifically, staining was observed on the equipment beneath dispenser nos. 3, 5, and 7 and in sump no. 1.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

21 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended based on documentation of the violation during the December 28, 2011 investigation to the January 18, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$34

Violation Final Penalty Total \$2,533

This violation Final Assessed Penalty (adjusted for limits) \$2,533

Economic Benefit Worksheet

Respondent Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell
Case ID No. 43532
Req. Ent. Reference No. RN102012473
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$312	5-Aug-2010	18-Oct-2012	2.21	\$34	n/a	\$34

Notes for DELAYED costs

Estimated cost to implement procedures to ensure the UST system is functioning properly and to cleanup and dispose of stained soils at an authorized facility. The date required is the date of the initial investigation and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$312

TOTAL

\$34

Screening Date 18-Jan-2012

Docket No. 2012-0340-PST-E

PCW

Respondent Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell

Policy Revision 2 (September 2002)

Case ID No. 43532

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102012473

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.7(d)(3)

Violation Description

Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition. Specifically, the registration was not updated to reflect the current release detection information for the UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 25%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

21 Number of violation days

mark only one
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$2,533

This violation Final Assessed Penalty (adjusted for limits) \$2,533

Economic Benefit Worksheet

Respondent Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell

Case ID No. 43532

Req. Ent. Reference No. RN102012473

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	5-Aug-2010	18-Oct-2012	2.21	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost to accurately prepare and submit an updated UST registration. The date required is the date of the initial investigation and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$11

Screening Date 18-Jan-2012

Docket No. 2012-0340-PST-E

PCW

Respondent Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell

Policy Revision 2 (September 2002)

Case ID No. 43532

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102012473

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Wallace Myers

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A), (b)(2)(A)(i)(III), (d)(1)(B)(ii), and (d)(1)(B)(iii)(I) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances. Failed to test the line leak detectors at least once per year for performance and operational reliability. Failed to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons. Also, failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1

21 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$5,000

One monthly event is recommended based on documentation of the violation during the December 28, 2011 investigation to the January 18, 2012 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$298

Violation Final Penalty Total \$5,066

This violation Final Assessed Penalty (adjusted for limits) \$5,066

Economic Benefit Worksheet

Respondent Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell

Case ID No. 43532

Req. Ent. Reference No. RN102012473

Media Petroleum Storage Tank

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	5-Aug-2010	18-Oct-2012	2.21	\$165	n/a	\$165

Notes for DELAYED costs

Estimated cost to provide release detection for the UST system at the Facility. The date required is the date of the initial investigation and the final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$118	5-Aug-2009	24-Jan-2011	2.39	\$14	\$118	\$132
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the annual line leak detector testing. The date required is one year prior to the initial investigation date and the final date is the date of compliance.

Approx. Cost of Compliance

\$1,618

TOTAL

\$298

Compliance History Report

Customer/Respondent/Owner-Operator: CN601101553 Karim, Khaled Classification: AVERAGE Rating: 1.50

Regulated Entity: RN102012473 Kwick Korner Shell Classification: HIGH Site Rating: 0.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 47790

Location: 203 S TIMBERLAND DR, LUFKIN, TX, 75901

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: January 18, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 18, 2007 to January 18, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Wallace Myers Phone: 512-239-6580

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? YES
3. If YES, who is the current owner/operator? Karim, Khaled, OWNER since 08/01/2008
Pyakurel, Shaki, OPERATOR since 08/01/2008
BRENCO MARKETING CORP., OPERATOR since 08/01/2008
4. If YES, who was/were the prior owner(s)/operator(s)? Karim, Khaled, OWNER OPERATOR, 6/7/2001 to 8/1/2008
5. If YES, when did the change(s) in owner or operator occur? 8/1/2008
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/23/2010	(849629)
2	01/05/2011	(877469)
3	01/12/2012	(977223)
4	01/12/2012	(980410)
5	01/12/2012	(980475)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

Compliance History Report

Customer/Respondent/Owner-Operator: CN603797085 Pyakurel, Shaki Classification: HIGH Rating: 0.00

Regulated Entity: RN102012473 Kwick Korner Shell Classification: HIGH Site Rating: 0.00

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 47790

Location: 203 S TIMBERLAND DR, LUFKIN, TX, 75901

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: January 18, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 18, 2007 to January 18, 2012

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Wallace Myers Phone: 512-239-6580

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? YES
3. If YES, who is the current owner/operator?
Karim, Khaled, OWNER since 08/01/2008
Pyakurel, Shaki, OPERATOR since 08/01/2008
BRENCO MARKETING CORP., OPERATOR since 08/01/2008
4. If YES, who was/were the prior owner(s)/operator(s)?
Karim, Khaled, OWNER OPERATOR, 6/7/2001 to 8/1/2008
5. If YES, when did the change(s) in owner or operator occur?
8/1/2008
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/23/2010	(849629)
2	01/05/2011	(877469)
3	01/12/2012	(977223)
4	01/12/2012	(980410)
5	01/12/2012	(980475)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- F. Environmental audits.
N/A
- G. Type of environmental management systems (EMSs).
N/A
- H. Voluntary on-site compliance assessment dates.
N/A
- I. Participation in a voluntary pollution reduction program.
N/A
- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KHALED KARIM AND SHAKI
PYAKUREL DBA KWICK
KORNER SHELL
RN102012473**

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§
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§
§
§
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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2012-0340-PST-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents together stipulate that:

1. Khaled Karim owns and Shaki Pyakurel operates a convenience store with retail sales of gasoline at 203 South Timberland Drive in Lufkin, Angelina County, Texas (the "Facility").
2. The Respondents' four underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.
3. The Executive Director and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about January 17, 2012.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Ten Thousand One Hundred Thirty-Two Dollars (\$10,132) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondents have paid Eight Thousand One Hundred Six Dollars (\$8,106) of the administrative penalty and Two Thousand Twenty-Six Dollars (\$2,026) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondents agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondents successfully conducted the line leak detector and piping tightness testing on January 24, 2011.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondents are alleged to have:

1. Failed to operate and maintain the UST system in accordance with accepted industry practices, in violation of 30 TEX. ADMIN. CODE § 334.48(b), as documented during investigations conducted on August 5, 2010 and December 28, 2011. Specifically, staining was observed on the equipment beneath dispenser nos. 3, 5, and 7 and in sump no. 1.
2. Failed to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, in violation of 30 TEX. ADMIN. CODE § 334.7(d)(3), as documented during investigations conducted on August 5, 2010 and December 28, 2011. Specifically, the registration was not updated to reflect the current release detection information for the UST system.
3. Failed to provide a method of release detection capable of detecting a release from any portion of the UST system which contains regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), as documented during investigations conducted on August 5, 2010 and December 28, 2011.

4. Failed to test the line leak detectors at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2)(A)(i)(III) and TEX. WATER CODE § 26.3475(a), as documented during investigations conducted on August 5, 2010 and December 28, 2011.
5. Failed to conduct reconciliation of inventory control at least once a month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(ii) and TEX. WATER CODE § 26.3475(c)(1), as documented during investigations conducted on August 5, 2010 and December 28, 2011.
6. Failed to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(I) and TEX. WATER CODE § 26.3475(c)(1), as documented during investigations conducted on August 5, 2010 and December 28, 2011.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Khaled Karim and Shaki Pyakurel dba Kwick Korner Shell, Docket No. 2012-0340-PST-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:

- i. Submit an amended registration to reflect the current release detection information for the UST system, in accordance with 30 TEX. ADMIN. CODE § 334.7;
 - ii. Install and implement a release detection method for the USTs at the Facility and begin recording volume measurements and reconciliation of inventory control at least once a month, in accordance with 30 TEX. ADMIN. CODE § 334.50;
 - iii. Implement procedures to ensure the UST system is operated and maintained in accordance with accepted industry practices including, but not limited to inspecting the equipment beneath dispenser nos. 3, 5, and 7 and sump no. 1 to ensure no leaks are present, in accordance with 30 TEX. ADMIN. CODE § 334.48; and cleanup and dispose of the stained soils at an authorized facility.
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a.i. through 3.a.iii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

4/18/12
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.


Signature

April 26, 2012
Date

Khaled Karim
Name (Printed or typed)
Authorized Representative of
Khaled Karim dba Kwick Korner Shell

Owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Davis
For the Executive Director

11/18/13
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

S. Pyakurel
Signature

08/20/2012
Date

SHAKHI PYAKUREL
Name (Printed or typed)
Authorized Representative of
Shaki Pyakurel dba Kwick Korner Shell

OWNER
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.